

CERTAINE  
ASSAYES

Propounded to the consideration  
of the Honourable COMMITTEE for  
regulating the proceedings at Law.

Whereby it is made evident that  
most Cases now determined in *Chancery*  
and other *Courts of Equity*, may be  
reduced to Tryall at Law.

To the great ease and benefit of the  
COMMONWEALTH.



LONDON,

Printed for Thomas Creak. 1652.

# ASSAYES

Propounded to the consideration  
of the Honourable COMMITTEE for  
regulating the proceedings at Law.

Whereby it is made evident that  
most Cases now determined in Chancery  
and other Courts of Equity, may be  
reduced to Tryall at Law.

To the great ease and benefit of the  
COMMONWEALTH.



LONDON

Printed for Thomas Curzon, 1772.

**TO THE  
RIGHT HONOURABLE**

**the COMMISSIONERS appointed  
for the regulating proceedings  
at LAW.**

May it please your Honours, **W**hen we are  
brought to consider the great  
delay and charge that continu-  
ally happens in the Courts by  
prolix and costly suits in Equi-  
ty, and considering the flourish-  
ing condition of the Common  
Law, even in the preceding times of the three first  
Edwards, and for some good space after, which  
few, or rather no suits were determined in an equi-  
table course: and finding the inconveniency of them  
at this day, which no man can wonder at, when the  
Lord chiefe Justice Fairfax in their infancy com- 21 E. 4. 23a.  
plained against them, and the pleaders or Counsel-

A 2

lers

(2)  
last that promoted them, the same bearing them  
more proper for a House of the Commons at Law. And  
also observing the great care former Parliaments  
have taken to make the Law as free from fraud as  
appears by the Act of 27. H. 8. of transferring  
uses, 13 Eliz. for suppressing frauds, and divers  
other Acts and having solemnly published your Pro-  
posals in order to regulating the proceedings at  
Law, many of which you have been pleased to  
take into consideration, both made me to adventure  
upon your clemencies this once more, by submitting  
these second considerations to your judgments, assu-  
ring my self that by your patronage and favouring  
the same with your eye and labours, something may  
whereby be produced to the benefit of the Common-  
wealth, and the Common Law cleared of many  
inconveniences (by the ignorance) cast upon it, by reason of  
abundance of needless proceedings in all Courts of  
Record. Which is the great grief of the ambition of  
the Judges, and the great loss of the Country.  
Your most humble servant  
and welwisher  
S. B.  
The

The Affayes follow

# The Affayes follow

1. That it is proposed that all Copyholds be sold to the Crown and the Commissioners may be assigned into all Countie, with rules for the setting down rates between Lord and Tenant, and that all Lands, &c. may be devisable and descandible at Common Law.
2. That the execution and perfecting of all Donations and agreements for Lands, &c. may be compelled at Common Law upon Action of the Case as now in Chancery, with damages only to be taxed for the delay; and that all mean Estates and profits may be bound that are either parties to the suit or the judgement by *scire facit*.
3. That uses and trusts be transferred of Leases for years, debts, goods, &c. as it is now of Freeholds by 27 H. 8. with some provision that the Lessees estates may not merge in the Freehold or the prescriptive of the partie.
4. That Legacies may be sued for by Mortgages and obligers relieved against for bonds and fines recoverable at law by the Common Law as formerly proposed.
5. That such proofs of Deeds as are now in equity &c. may be allowed at law as now in equity.
6. That speciall actions of the case may be brought at Law in all reasonable cases according to the Lord Fairfax his advice in the 31. of Henry 8.
7. That the Writ of Joynture &c. may not survive, and that they and executors may have the

ciall

(24)  
ciall actions of the case against each other for all Equitable injuries.

8. That imperfect and deficient conveyances made upon valuable and good consideration may be allowed at Law according to the intent of the parties expressed or proved, and that an action of the case may lie against the partie and his heires, &c. to compell them to make good the same.

9. That Joint-sureties may have actions of the Case against each other for contribution, and against the principall in the nature of a Writ de *plegiis acquietandis* to be discharged from engagements.

10. That *non compar mentis* may have the plea in his own person.

11. That waite and remedy for Rent may be had by the Purchaser against the Tenant, after notice; and the Reversion passe as well without as with attornment, in all cases.

12. That union of possession within memory, and above 60 yeeres, may not prevaile against usage by all the time of present memory, but that prescription therein may be allowed.

13. That where deeds, &c. belong to two or more, and are kept by one in trust for the rest and not produced upon reasonable request, upon trials, &c. (charges being tendred) for the defence of the common title, that an action of the case may lie to recover the deeds and damage.

14. That detinue may lie for deeds, &c. though the date be not known, and that like Action may lie for the trustor against the trustee; for deeds, &c. and that the release or discharge of the trustee without

con-



consent of the trustor may not be valid, where either the trust is expressed or known.

20. That Assignes of Statutes, Judgements, Recognizances, Bonds, Bills, Debts, &c. made for valuable consideration, and not for maintenance may sue the same in their own names, and discharge them at pleasure; and that the release or discharge of the assignor after notice shall not be valid; and that if the assignor notwithstanding such notice shall sue, &c. garnishment shall lie, and interpleading is now used in detinue, &c.

21. That upon bills of discovery the Plaintiff may proceed no further then to Bill and Answer, and to examine the Defendant upon Interrogatories, if the Case or parties desire it, and then the Answers to be used at Common-law.

22. That Depositions of witnesses in perpetual memory may presently be published and used upon Trials for the ease of the Client, where the witnesses be sick, impotent, far distant, or doe not appear upon due service, or for other reasonable cause.

23. That Costs and Damages may be given to the parties, where they are staid by Injunction, for delay or upon unjust or untrue surmises, as was anciently; as appears by 21 E. 4. 74. and the same to be ascertained by the oath of the party, or other competent witnesses.

24. That Fee-farmes, Herlots, &c. may be good in Law, as they were before the Statute of *quia emptores terrarum*, and are at this day decreed in equity.

25. That in case any Court of Equity shall proceed in any cause wherein there is or shall be proper remedy

remedy in law joined there the Court shall  
 prohibit them as anciently and this Court shall  
 the prohibition may remove Costs and Costs  
 the inhibition made by the Court shall be  
 I shall be bound to the Court of the Court  
 know his own weakness and know his own  
 propose any thing of this kind; and he shall  
 apt to make him to be called to the Court  
 in the Court; and shall be bound to the Court  
 of the Court that has been proposed; and being  
 willing to offer his mite at the Court of the Court  
 would humbly and heartily desire the Court that  
 if he find any thing here that he think it may  
 be inconvenient, that he will then either himself  
 or publique make his Answer; with his rea-  
 sons; or if he shall think fit to add more to his  
 may more rationally, as it will be a very good  
 work to the Court and shall be bound to the Court  
 and shall be bound to the Court of the Court  
 let be sick, impatient, or distant or do not  
 upon the Court, or for other reasonable cause.  
 18. That Costs and Damages may be given to the  
 parties where they are laid by Injunction for delay  
 or upon unjust or untrue surrenders was anciently;  
 as appears by 21. 22. and the same to be ancient  
 rained by the oath of the party or other competent  
 witnesses.  
 19. That Fee-fines shall be good in  
 law as they were before the statute of our emperor  
 Edward and are at this day decreed in equity.  
 20. That in case any Court of Equity shall pro-  
 ceed in any cause wherein there is or shall be proper  
 remedy